

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

TYLER MILLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 1:20-cv-04849
	)	
BRIGHTSTAR ASIA, LTD.,	)	District Judge George B. Daniels
	)	Magistrate Judge James L. Cott
Defendant.	)	

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**STIPULATION FOR EXTENSION OF DEFENDANT’S  
DEADLINE TO RESPOND TO THE FIRST AMENDED COMPLAINT**

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Plaintiff, Tyler Miller (“Plaintiff”), and Defendant, Likewize Hong Kong Limited f/k/a Brightstar Asia, Ltd. (“Likewize HK”), by and through their respective counsel and subject to the approval of the Court, hereby stipulate and agree that the time within which Likewize HK may respond to the First Amended Complaint (Dkt. 24) is extended through and including September 23, 2022.

1. Plaintiff filed the Amended Complaint on September 30, 2020 alleging causes of action for breach of the Shareholders Agreement (Counts I and II), breach of the implied covenant of good faith and fair dealing (Count III), and breach of fiduciary duty (Count IV). On October 26, 2020, Likewize HK filed its motion to dismiss the First Amended Complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) asserting that Plaintiff lacked standing to assert his claims because they were derivative under Delaware law, or, alternatively, for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). (Dkt. 30 & 31.)

2. On May 26, 2021, Magistrate Judge Cott issued a Report and Recommendation holding that all four Counts in the First Amended Complaint are derivative claims under Delaware

law and recommending dismissal of those claims for lack of standing. (Dkt. 39.) On September 13, 2021, Judge Daniels issued a Memorandum Decision and Order adopting the Report and Recommendation and dismissing Plaintiff's First Amended Complaint for lack of subject matter jurisdiction. (Dkt. 43.)

3. Plaintiff appealed the District Court's judgment. However, on appeal, Plaintiff did not appeal the District Court's dismissal of his claims in Counts II and IV of the First Amended Complaint. Rather, he only appealed the District Court's dismissal of his breach of contract and implied covenant claims in Counts I and III of the First Amended Complaint.

4. On August 3, 2022, the U.S. Second Circuit Court of Appeals issued an Opinion in which it affirmed the District Court's dismissal as to Plaintiff's breach of contract claim in Count I of the First Amended Complaint, but vacated the District Court's dismissal of Plaintiff claim for violation of the implied covenant of good faith and fair dealing in Count III of the First Amended Complaint and remanded the case to this Court for further proceedings consistent with the Opinion.

5. On August 24, 2022, the U.S. Second Circuit Court of Appeals issued the Judgment Mandate, which was filed in this Court on the same day. (*See* Dkt. 48.)

6. In order to allow Likewize HK time to properly and substantively respond to the First Amended Complaint on remand from the Court of Appeals, Likewize HK requested, and Plaintiff agreed to, an extension of Likewize HK's deadline to respond to the First Amended Complaint through and including September 23, 2022.

7. In October 2020, the parties agreed to, and the Court granted, an extension of time for Likewize HK to respond the First Amended Complaint. (Dkt. 26, 28.)

8. The relief requested herein will not prejudice either party and is made in good faith and not for the purposes of delay or harassment. As this extension is being sought prior to any scheduling conference, this relief does not affect any other scheduled dates or deadlines.

Dated: September 1, 2022

McMANIMON, SCOTLAND & BAUMANN,  
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